

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 255 Insurance/Discriminatory Practices Relating to Firearm Ownership or Possession
SPONSOR(S): Insurance & Banking Subcommittee; Gaetz
TIED BILLS: **IDEN./SIM. BILLS:** SB 424

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 1 N, As CS	Salzverg	Cooper
2) Civil Justice Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

In Florida, current law prohibits unfair insurance trade practices as outlined and governed under part IX, of chapter 626, F.S. Such unfair practices include, but are not limited to: misrepresentations and false advertising, false statements, unlawful rebates, or unfair discriminatory practices.

Additionally, current law prohibits an insurer from denying coverage, increasing any premium, or otherwise discriminating against any insured or applicant on the basis of the lawful ownership or possession of a firearm or ammunition. This prohibition is not enumerated as an unfair trade practice and seemingly lacks specific enforcement authority.

This bill amends s. 626.9541, F.S., making it an unfair discriminatory practice for a personal lines property or personal lines automobile insurer to:

- Issue, reissue, or renew a policy, cancel or otherwise terminate a policy, or charge a discriminatory rate based on an insured's or applicant's or such person's household member's lawful use, possession, or ownership of a firearm.
- Does not prevent an insurer from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure a firearm or a firearm collection whose value exceeds the standard policy coverage.
- Disclose an insured's or applicant's or such person's household member's ownership or possession of a firearm to a third party or affiliated entity unless the insurer discloses to the insured or applicant a specific need to disclose the information and the insured or applicant expressly consents to the disclosure, or the disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.
- Does not prevent the sharing of information between an insurance company and its licensed insurance agent if a separate rider has been voluntarily requested by the policyholder or prospective policyholder to insure a firearm or a firearm collection whose value exceeds the standard policy coverage.

This bill should not have a significant negative fiscal impact on Florida insurers because gun ownership is not currently used in determining liability in rate-setting. In some cases, insurers may have to alter their current disclosure and notice procedures to comply with this bill, resulting in an indeterminate amount of administrative costs. However, insurers may be able to reduce those costs by not having to obtain specific consent from the applicant or insured to share information regarding ownership or possession of firearms, if such disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.

The bill takes effect July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Currently, the Office of Insurance Regulation (OIR) is tasked with enforcement of Florida laws relating to the operation of insurance companies, including rate-setting proposed by insurers.¹ Additionally, OIR in reviewing rate filings must make sure insurers do not practice unfair methods of competition or unfair or deceptive acts as outlined by current law.² Such unfair practices include, but are not limited to: misrepresentations and false advertising, false statements, unlawful rebates, or unfair discriminatory practices.

Current law specifically prohibits insurers from knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class when setting a rate for an insurance policy. For example, insurers may not take into account an insured's or applicant's past claim for abuse or any actions taken for treatment of abuse when underwriting, issuing, reissuing, or terminating a policy or paying a claim.³

OIR encounters discriminatory practices generally in three different ways:⁴

- 1) In proposed rate filings, which OIR will not approve if the rate reflects unfair discrimination in the setting of the rate or issuance of the policy.
- 2) When a complaint is made to OIR via the Division of Consumer Services of the Department of Financial Services. The alleged discriminatory practice is examined by the Bureau of Market Investigations within OIR and corrective action may be pursued.
- 3) From constituent calls to legislators' offices, which are passed along to OIR. In turn, these concerns are referred to the Bureau of Market Investigations.

Regarding the possession of a firearm, current law prohibits an insurer from denying coverage, increasing any premium, or otherwise discriminating against any insured or applicant on the basis of the lawful ownership or possession of a firearm or ammunition. This provision does not prevent an insurer from considering the fair market value of firearms or ammunition in the setting of premiums for scheduled personal property coverage.⁵ Although unrelated parts of the bill which passed were struck down in a legal challenge, the subsection relating to insuring firearms still remains good law today.⁶ An issue with the current law is that it lacks specific authority to take action against any insurers which violate the proscribed behavior.

For personal lines property or personal lines automobile insurance, insurers will provide coverage for liability and for property loss. Inquiring into whether an insured party or applicant lawfully owns or possesses a firearm is not common practice within the insurance industry in Florida when determining liability coverage in setting rates.⁷ Insurers generally provide property loss coverage for firearms in two ways. Firearms may be covered as a part of the standard policy or as a "rider." A rider covers specific property loss in excess of the coverage amount found in usual insurance policies. Disclosure of the insured or applicant's firearms is necessary to catalog the property being covered by the rider. Often this information is shared with parties within the insurance company structure when issuing and

¹ s. 627.062, F.S.

² s. 626.9541, F.S.

³ s. 626.9541(1)(g)(1), F.S.

⁴ Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

⁵ s. 790.338(7), F.S., as created by HB 155, ch. 2011-112, Laws of Florida.

⁶ *Wollschlaeger v. Farmer*, 880 F.Supp.2d 1251 (2012).

⁷ Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

servicing a policy, such as: independent adjusters, insurance agents, managing general agents, and customer service representatives, which could be labeled as third party or affiliated entities.⁸

Effect of the Bill

This bill amends s. 626.9541, F.S., making it an unfair discriminatory practice for a personal lines property or personal lines automobile insurer to:

- Issue, reissue, or renew a policy, cancel or otherwise terminate a policy, or charge a discriminatory rate based on an insured's or applicant's or such person's household member's lawful use, possession, or ownership of a firearm.
- Does not prevent an insurer from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure a firearm or a firearm collection whose value exceeds the standard policy coverage.
- Disclose an insured's or applicant's or such person's household member's ownership or possession of a firearm to a third party or affiliated entity unless the insurer discloses to the insured or applicant a specific need to disclose the information and the insured or applicant expressly consents to the disclosure, or the disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.
- Does not prevent the sharing of information between an insurance company and its licensed insurance agent if a separate rider has been voluntarily requested by the policyholder or prospective policyholder to insure a firearm or a firearm collection whose value exceeds the standard policy coverage.

One effect of the bill is to provide a specific enforcement mechanism pertaining to insurance practices and disclosure of firearms, while still allowing insurers to offer property loss coverage of firearms through the use of a rider. Additionally, the bill does not prevent the sharing of gun ownership information by insurers for purposes of underwriting and issuing a policy containing a rider. By amending the unfair discriminatory practices section of the Florida statutes, the Office of Insurance Regulation will be able to absorb enforcement of these new provisions into their current regulatory scheme with little, if any, financial strain on OIR.⁹

B. SECTION DIRECTORY:

Section 1: Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts by an insurer.

Section 2: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

This bill does not appear to have any impact on state expenditures. The OIR has stated that enforcement of this bill would be absorbed into their current operations, with only minimal, if any additional workload.

⁸ According to representatives of the Florida insurance industry, as provided to the staff of the Insurance & Banking Subcommittee on 01/20/2014.

⁹ Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have any impact on local revenue.

2. Expenditures:

This bill does not appear to have any impact on local expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Consumers: The bill should not have a substantial economic impact on Florida policyholders. Any consumers that were denied coverage or their coverage was cancelled in the past because of their lawful possession of a firearm will now be able to acquire personal lines of property and automobile insurance without their lawful ownership of a firearm being unfairly taken into account in the setting of the rate. Additionally, Florida policyholders who were charged a higher rate for their policies because of their lawful ownership of a firearm may see a reduction in their policy premiums, reflecting the insurers' inability to charge a higher rate because of a firearm. The bill does not impede an individual's ability to obtain a rider with their insurance policy for property loss coverage of their firearms.
2. Insurance Providers: This bill should have little, if any, effect on the information insurers request when issuing, reissuing, or canceling a policy. Only one insurance company in Florida is known to have inquired whether a specific type of firearm (assault rifles) was owned by the applicant before issuing them a policy.¹⁰ Consequently, since such information is not used in determining liability, restricting the disclosure of such information should not pose a problem to insurers. Additionally, the bill does not impede an insurer's ability to offer a rider for property loss coverage of firearms.

This bill may have an indeterminate amount of administrative costs on insurers in revising their notice and disclosure practices to comply with the bill. However, insurers may be able to reduce those costs by not having to obtain specific consent from the applicant or insured to share information regarding ownership or possession of firearms, if such disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

¹⁰ Information obtained from the Office of Insurance Regulation, 01/15/2014. On file with the Insurance & Banking Subcommittee staff.

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2014, the Insurance & Banking Subcommittee met and passed HB 255 with a strike all amendment.

This amendment included the same or similar provisions that were in the bill relating to rates and disclosure regarding firearms. It also clarified that an insurer is not prevented from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure firearms. It also allowed disclosure of firearm ownership when necessary to quote or bind coverage, continue coverage, or adjust a claim. Finally, for the purposes of providing insurance coverage, it did not prevent the sharing of information between an insurance company and its agent when separate riders have been requested by a policyholder or applicant.

This staff analysis has been up updated to reflect the amendment's changes.